

**NOV 20 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

DWAYNE PIERCE, aka Kevin	)	No. 02-57077
Burton,	)	
	)	D.C. No. CV-01-02268-LGB
Petitioner-Appellant,	)	
	)	
v.	)	<b>MEMORANDUM*</b>
	)	
STEVEN J. CAMBRA, JR., Warden,	)	
	)	
Respondent-Appellee.	)	
_____	)	

Appeal from the United States District Court  
for the Central District of California  
Lourdes G. Baird, District Judge, Presiding

Argued and Submitted November 6, 2003  
Pasadena, California

Before: PREGERSON, FERNANDEZ, and BERZON, Circuit Judges.

Dwayne Pierce appeals the district court's denial of his petition for habeas corpus, which was based upon his claim that the state court both denied him procedural due process at trial and improperly later determined that he was, in fact,

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

competent. We affirm.

If there had been a bona fide doubt as to Pierce's competency which arose during trial, the trial court was obligated, as a matter of procedural due process, to inquire into his competence to stand trial. See United States v. Loyola-Dominguez, 125 F.3d 1315, 1318 (9th Cir. 1997); Amaya-Ruiz v. Stewart, 121 F.3d 486, 489 (9th Cir. 1997); United States v. Lewis, 991 F.2d 524, 527 (9th Cir. 1993); Hernandez v. Ylst, 930 F.2d 714, 716 (9th Cir. 1991). However, as the state courts determined, on the facts of this case no bona fide doubt actually arose at that time.

Nor can we say that the state courts erred when, following a post-trial proceeding, they determined that Pierce was not, in fact, incompetent and was able to participate as required by the United States Constitution, despite his various intentional manipulations and acting out. See Cooper v. Oklahoma, 517 U.S. 348, 354, 356, 116 S. Ct. 1373, 1376–77, 134 L. Ed. 2d 498 (1996); Drope v. Missouri, 420 U.S. 162, 171–72, 95 S. Ct. 896, 903–04, 43 L. Ed. 2d 103 (1975).

AFFIRMED.